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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2006-24413-35

[COTP San Francisco Bay 05-009]

RIN 1625-AA87

Security Zone; San Francisco Bay, CA


AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving security zone extending 100 yards in the U.S. navigable waters around the United States Coast Guard Cutter TERN while transiting the San Francisco Bay, California. This security zone is needed for national security reasons to protect the vessel, crew, and passengers from potential subversive acts. Entry into this security zone is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

DATES: This rule is effective from 10:30 a.m. on November 7, 2005 to 2 p.m. on November 7, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco 05-009 and are available for inspection or copying at the

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Waterways Safety Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric Ramos, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco at (510) 437-2770, or the 24 hour Command Center at (415) 399-3547.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the threat of subversive acts against Coast Guard vessels, crews, and passengers currently exists and is ongoing.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The measures contemplated by this rule are intended to prevent subversive acts against Coast Guard vessels, crews, and passengers located in San Francisco Bay. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Background and Purpose

In its effort to thwart terrorist activity, the Coast Guard

has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 et seq.) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

A foreign dignitary will be visiting the United States Coast Guard Cutter TERN. Therefore, to address the aforementioned security concerns, and to take steps to prevent subversive acts against Coast Guard vessels, crews, and passengers, the Coast Guard is establishing a security zone around the aforementioned vessel while transiting San Francisco Bay, California. Due to these heightened security concerns, and the catastrophic impact an attack would have on the crew and passengers, and the surrounding area and communities, security zones are prudent for Coast Guard vessels.

Discussion of Rule

The security zone remains in effect while the Coast Guard vessel is underway, anchored or moored within the designated waters of San Francisco Bay. The security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of the vessel. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port, or his designated representative. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to a portion of navigable waters, the effect of this regulation will not be significant because: (i) the zone encompasses only a small portion of the waterway; (ii) vessels are able to pass safely around the zone; and (iii) vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for Coast Guard vessels operating in San Francisco Bay. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We expect this rule may affect owners and operators of

vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by this security zone. This security zone will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Eric Ramos, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco at (510) 437-2770, or the 24 hour Command Center at (415) 399-3547.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments or would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where located under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50

U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5;
Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security
Delegation No. 0170.1.

2. Add § 165.T11-052, to read as follows:

§ 165.T11-052 Security Zone; San Francisco Bay, California.

(a) Definitions. As used in this section--

(1) Coast Guard Patrol Commander means a commissioned,
warrant, or petty officer of the Coast Guard who has been
designated by the Commander, Coast Guard Sector San Francisco.

(2) Official Patrol means any vessel assigned or approved
by Commander, Coast Guard Sector San Francisco with a
commissioned, warrant, or petty officer on board and displaying
a Coast Guard ensign.

(b) Locations. The following area is a security zone:

(1) San Francisco Bay. All waters extending from the
surface to the sea floor, within 100 yards of Coast Guard
vessels within the waters of San Francisco Bay east of a line
drawn between Point Lobos to the north in position 37°46.52' N,
122°30.52' W, and Point Bonita to the south, in position
37°31.44' N, 122°48.55' W.

(c) Regulations.

(1) In accordance with the general regulations in § 165.33
of this part, entry into this security zone is prohibited,

unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

(2) Persons desiring to transit the area of a security zone may contact the Captain of the Port at telephone number 415-399-3547 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, or his designated representative.

(3) When a Coast Guard vessel approaches within 100 yards of a vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the Coast Guard vessel's security zone unless it is either ordered by, or given permission from, the COTP San Francisco to do otherwise.

(d) Enforcement. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by local law enforcement as necessary.

(e) Effective period. This section becomes effective at 10:30 a.m. on November 7, 2005, and will terminate at 2 p.m. on November 7, 2005.

Dated: 7 NOVEMBER 2005

W. J. Uberti

W. J. UBERTI
Captain, U.S. Coast Guard
Captain of the Port
San Francisco, California